

JDS SDNY

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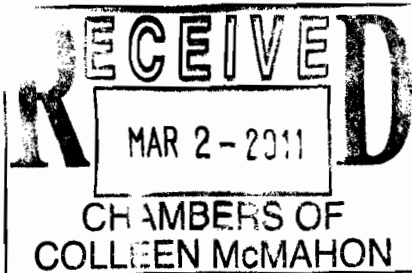
ELECTRONICALLY FILED

Case #:

FILED: 3/3/11

March 1, 2011

Hon. Colleen McMahon
 United States District Judge
 United States District Court, Southern District of New York
 500 Pearl St.
 New York, NY 10007-1312



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MEMO ENDORSED

Re: *Chikezie Ottah v. First Mobile Technologies*, Case No. 1:10-cv-07296-CM (S.D.N.Y.)

Dear Judge McMahon:

This firm represents Defendant First Mobile Technologies ("FMT") in the above-captioned matter. On January 14, 2011 this Court held an Initial Pretrial Conference, wherein it dismissed Plaintiff Chikezie Ottah's ("Ottah") first amended complaint in the above-referenced matter without prejudice. The Court also granted Ottah the opportunity to prepare and file a new complaint, but instructed him to plead his cause of action with particularity. On the same day, the Court entered a Minute Entry (attached as Exhibit 1) dismissing Ottah's first amended complaint and giving Ottah until February 18, 2011 to "draft a new complaint and to send that complaint to First Mobile and its attorneys." Further, the Court stated that "[t]he new complaint should also be filed with the Court."

On January 31, 2010, FMT received several documents, including a document titled "Amendment Complaint," bearing the case number listed above. For the convenience of the Court, the documents mailed to FMT by Ottah are attached as Exhibit 2. The documents included a Request for Waiver of Service. Counsel for FMT received the same documents on February 28, 2011. According to the Clerk's Office, no corresponding complaint has been filed with the Court in the above-captioned case or any other case. While FMT is willing to waive service of the complaint, it believes that such complaint must be filed with the Court before it can technically waive service.

FMT seeks guidance on how to proceed in this matter. FMT suggests that the Court instruct the parties as follows, in accordance with the Court's January 14, 2011 Initial Pretrial Conference and Minute Entry:

3/2/2011
 I instruct the parties
 to proceed as suggested by MOST
 FMT. Mr. Ottah you
 FILE your amended complaint
 first, then serve the
 other side

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1. Ottah must draft and file a new complaint with the Court by March 11, 2011 (this assumes the Court is willing to extend its original February 18, 2011 deadline for Ottah to do so);
2. Ottah must serve the new complaint on FMT with a Request for Waiver of Service;
3. FMT shall respond to the new complaint within 60 days of service of the new complaint on FMT.

FMT looks forward to the Court's guidance on how to proceed. Per the Individual Practices of Judge McMahon (and the convenience of Ottah), Ottah has simultaneously been sent a copy of this letter.

Respectfully submitted,



Cosmin Maier

Attorney for Defendant First Mobile
Technologies

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